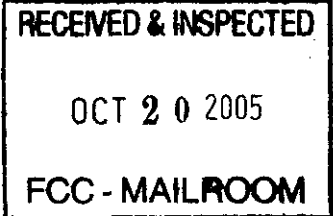


Clay Community School Corporation  
9750 N. Crawford Street  
Knightsville, Indiana 47857



October 13, 2005

DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Office of the Secretary  
445 - 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear FCC:

On May 26, 2005 I filed an appeal with the FCC regarding an action of the Schools and Libraries Division of the Universal Services Administrative Authority. The SLD denial was dated April 4, 2005. To date I have heard nothing from the FCC. Please inform me on the status of the appeal to your agency.

I have enclosed copies that I sent originally. Please address your response to:

Bob Carnal, E-Rate Contact  
2937 Bee Ridge Road, Suite 7  
Sarasota, FL 34239

Thank you for your assistance.

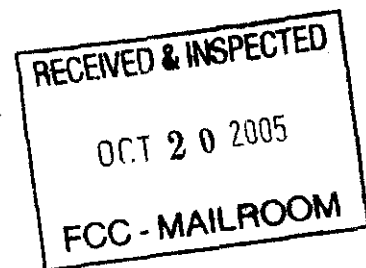
Sincerely,



Bob G. Carnal, contact

No. of Copies rec'd 0  
List A B C D E

Clay Community School Corporation  
9750 N. Crawford Street  
Knightsville, Indiana 47857



May 26, 2005

Federal Communications Commission  
Office of the Secretary  
445 - 12th Street, SW  
Washington, DC 20554

This is a letter of appeal of a decision of the SLD dated: April 5, 2005

Contact person for this appeal: Bob G. Carnal  
2937 Bee Ridge Road, Suite 7  
Sarasota, FL 34239  
Telephone: 941-921-0905  
FAX: 941-951-0915  
Email: bcarnal@admtec.com

Applicant: Clay Community School Corporation  
Form 471 Application Number: 404344  
Billed Entity Number: 130727  
FRN: 1107278  
Docket CC Docket No. 02-6

This request is for Telecommunication—Wide Area Network where the service provider is a common carrier that has entered into a contract to lease the WAN service to the school for ten years. The WAN (fiber circuits) connect nine (9) school sites across 15 ½ miles. The MRC requested is for \$845 for an annual total MRC of \$10,140. There is an upfront (NRC) cost of \$436,479 for construction, installation, and on-premise equipment. This FRN was denied on the basis of: "30% or more of this FRN includes a request for up-front, non-recurring charges for On-premise Equipment for End-to-End Service that are greater than 67% of total charges, which is a violation of program rules". Further in the SLD's denial of our appeal, they state that the WAN service is designed and installed as a "Daisy-Chain" in violation of program rules. The SLD denial continues to maintain that the cost of the on premise equipment is greater than 67%, and that the "lease" is structured in a way were "it reaches essentially the same result as a prohibited WAN purchase by an applicant (not eligible)."

We believe this conclusion to be in error. We further believe the school satisfies the SLD and FCC rules concerning WANs—the Tennessee ruling of the FCC. The school has no current or future ownership rights to the circuits, the lease is not for an exclusive service, the equipment is not or will not be used for any other purpose other than the WAN, the schools' LANs are independent of the WAN, and the provider is responsible for the control and maintenance of the circuits. At question is the up-front cost of this lease. We believe the FCC and the SLD rules allows for up-front cost. We find in the SLD WAN Fact Sheet, No. 6 Amortization of Capital Investment Costs, "Eligible Telecommunications Services and Internet Access can include service provider equipment costs, and/or a non-recurring charge for capital investment by the service provider." The section goes on to state the necessity of prorating the cost over three years if that cost exceeds \$500,000. In this FRN the up-front cost does not exceed \$500,000, and therefore, the total up-front cost of \$436,479 was included in the FRN for year 2004.

We believe the evaluation of the contract and related costs by the SLD is in error. Pursuant to the SLD's rules on On-premise Priority 1 Equipment, the ability to recoup the initial costs for construction or installation of On-premise Priority 1 Equipment is limited to less than 67% of total charges. The SLD rules further state that the initial capital costs for equipment and installation located outside of applicant's facilities are not considered to be On-premise Priority 1 Equipment.

The school applied for funds from the SLD for a WAN that would connect nine (9) of Clay Community Schools' facilities over 15 ½ miles. The cost breakdown (attached) shows that the costs associated with On-premise Priority 1 equipment is \$59,579.00 (Cisco Equipment = \$50,579.00 plus installation of \$9,000 for the \$59,579 total). All other costs are for other than On-premise Priority 1 equipment. These other costs are: Engineering Cost of Outside Plant at \$40,920, Right-of-Way Costs at \$24,000, Make Ready Cost of \$81,840, Cable Cost of \$81,840, Cable Hardware Cost of \$40,920, and Cable Installation Cost of \$167,760. The total of these costs is \$496,859.00 making the cost of the on-premise equipment 12% of the total cost for provisioning the WAN. Please see the attached document: Clay Community Schools Cost Breakdown for SLD and the Service Order #1 that was previously submitted for review by PIA.

We believe the SLD erred in calling the design "Daisy- Chain." Please see the enclosed design diagram. This clearly shows that there is a fiber (circuit) run to each facility. We believe the correct term for the cable design is "home run." We thus challenge the SLD insertion that the design violates the rules. The design allows for the provider to sell the service to any customer along any of the eight routes.

The SLD denial also states that our 470 did not request Internal Connections, and this was an additional reason for the denial. It is correct that we did not request Internal Connections on the 470, however, we believe the request is for Telecommunications—end-to-end WAN service not Internal Connections thus there was, obviously, no Internal Connections request in the 471 application.

We believe the school and the provider have met the SLD and FCC rules for Wide Area Network funding. We believe that the On-premise equipment cost is less than 67% and the design is within program rules therefore satisfying all rules of the end-to-end WAN service. We believe what is not clear in the rules is: 1) what constitutes the provider's "capital investment" and 2) the amount that can be reasonably claimed under program rules. We, therefore, respectfully request that the FRN in question be re-examined using the facts as set out herein, and that a favorable ruling of "Funded" be granted.

Sincerely;

A handwritten signature in black ink, appearing to read "Bob G. Carnal", with a long horizontal flourish extending to the right.

Bob G. Carnal  
School District Contact

Attachments:

1. Provider Contract
2. Provider Service Order
3. Provider Diagram of Service
4. Providers Itemization of Cost
5. SLD Letter of Denial

1

## THIS MASTER SERVICE AGREEMENT

is made as of the 21<sup>st</sup> day of January 2004.

### BETWEEN:

Cinergy Communications Company ("CCC"), a body corporate duly incorporated and existing under the laws of the State of Kentucky, with a place of business at 1419 W. Lloyd Expressway, Suite 100, Evansville, Indiana 47710;

### AND:

Clay Community Schools ("CUSTOMER"), a body corporate duly incorporated and existing under the laws of the State of Indiana, with a place of business at 9750 North Crawford Street, Knightsville, IN 47857.

### WHEREAS:

- A. CCC is a provider of fiber optic transmission capacity and ancillary services.
- B. CUSTOMER desires to obtain fiber optic transmission capacity and ancillary services as described in Schedule A ("Services") from CCC.
- C. The parties desire to enter into this Agreement, pursuant to the terms and conditions set forth herein.

IN CONSIDERATION of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the parties agree as follows:

### 1. SCOPE OF AGREEMENT.

CCC shall use commercially reasonable efforts to provide those Services described in the Service Order attached as Schedule A, which is incorporated by reference as if set forth in full herein, to CUSTOMER at the rates and on the terms and conditions described herein; and CUSTOMER agrees to purchase such Services from CCC. Additional Service Orders may be prepared by CUSTOMER and CCC from time to time and, subject to execution by CUSTOMER and acceptance by CCC, shall be binding upon CCC and CUSTOMER and shall be deemed a part of this Agreement. The applicable rates for the Services are set forth in the applicable Service Orders.

### 2. DEFINITIONS.

For purposes hereof: "Available" means all necessary CCC equipment for a Service has been installed. "Requested Service Date" means the date CUSTOMER desires for a Service to first be made Available, as specified in the applicable Service Order. "Service" or "Services" means transmission capacity (and ancillary services) that are covered by an executed Service Order that has been accepted by CCC and made a part of this Agreement. "Service Commencement Date" means the date a Service is first made Available to CUSTOMER and shall not be before July 1, 2004. "Service Order" means any CUSTOMER Service Order accepted by CCC.

### 3. PAYMENT AND TAXES.

3.A.i. Payment. CUSTOMER shall pay CCC each month within sixty (60) days of the date of invoice: (i) the monthly lease fee (prorated for any partial month) for each Available Service ("Monthly Lease Fee"), (ii) the non-recurring lease fee for each Available Service ("Non-Recurring Lease Fee") and (iii) any other applicable charges invoiced by CCC to CUSTOMER, including without limitation any

applicable termination charges, (collectively, the "Invoiced Amount"). The first invoice shall be for the first two months; each invoice thereafter shall be for the following month. However, no invoice shall be dated earlier than July 1, 2004. If any invoice is not paid when due: (i) a late charge shall accrue equal to 0.05% per day (or the maximum legal rate, if less) of the unpaid balance per month; (ii) CCC may suspend or terminate the Service without notice; and (iii) CUSTOMER shall reimburse CCC for all charges, costs, expenses and attorney's fees incurred by CCC to collect such amounts. Should CUSTOMER dispute any of the charges on its monthly invoice, it shall notify CCC in writing within sixty (60) days after CUSTOMER's receipt of the invoice of the disputed charges and CUSTOMER's reason for disputing the same. If CUSTOMER does not deliver a challenge or dispute to any invoice within sixty (60) days after CUSTOMER's receipt of that invoice, the invoice will be considered final and accepted without recourse or later dispute by CUSTOMER.

3.A.ii. CUSTOMER expects that the Universal Service Administrative Company, Schools and Libraries Universal Service Support Mechanism ("USAC") will pay directly to CCC, a portion of the amounts owed under this Agreement by CUSTOMER. CCC agrees that invoices submitted by it to CUSTOMER for payment shall, initially, be net of the amounts CUSTOMER expects USAC will pay directly to CCC on that invoice. Should CCC not receive the expected payment from USAC within sixty (60) days of the due date for the applicable invoice, it will notify CUSTOMER of same; and CUSTOMER shall pay such amount within sixty (60) days of the date of such notice. Nothing in this Section 3.A.ii. is intended to relieve CUSTOMER of its obligation to pay all amounts contemplated by this Agreement; and it shall remain primarily liable for all such amounts.

3.B. Taxes. Sales taxes, property taxes, franchise fees and other local, state or federally charged, imposed or authorized taxes, tax-like charges, fees, charges or surcharges resulting from, or attributable to, this Agreement or the Services are not built into CCC's rates and will be charged to CUSTOMER (with a reasonable overhead allocation, if such an overhead allocation is allowed by law). CUSTOMER agrees to pay all such charges. When applicable, CUSTOMER shall provide CCC with a properly executed Certificate of Exemption for any such amounts from which CUSTOMER believes it is exempt and shall hold CCC harmless from any costs or expenses resulting to CCC should CCC rely on such Certificate of Exemption.

3.C. Adjustments to the Monthly Lease Fee. In January of each year, the Monthly Lease Fee shall be adjusted to account for changes, if any, to the Consumer Price Index over the prior twelve (12) month period, using September as the base month. As used herein, the term "Consumer Price Index" is the Consumer Price Index published by the United States Department of Labor - Bureau of Labor Statistics All Urban Consumers (CPI-U), 1982-1984 +100. If the Consumer Price Index ceases to incorporate a significant number of items now incorporated therein, or if a substantial change is made in the method of establishing the Consumer Price Index, then the parties agree to replace the Consumer Price Index with a reasonable substitute.

#### 4. TERM & TERMINATION.

4.A. Term - Master Service Agreement. The term hereof shall be for ten (10) years, commencing on the date first written above and shall be automatically renewed from year to year under the same terms and conditions as stated herein and as may be modified by mutual agreement of the parties from time to time, unless either party gives the other party written notice of termination at least thirty (30) days prior to the end of the term or renewal term. Notwithstanding such termination, this Agreement shall remain in full force and effect, and shall continue to govern, with respect to any then-existing Service Order for so long as such Service Order is in effect.

4.B. Term - Service Order. Each Service Order shall have its own initial term. Upon the expiration of the initial term applicable to that Service Order, the term of such Service Order shall automatically renew from year to year under the same terms and conditions as stated herein, unless either party gives the other party written notice of termination at least thirty (30) days prior to the end of the term or renewal term.

#### 4.C. Termination – Service Order.

4.C.i. A Service Order may be terminated by either party by giving notice of termination to the other party at the end of the initial term, or at the end of the then current renewal term, applicable to that Service Order.

4.C.ii. A Service Order may be terminated by CCC, immediately, on notice to CUSTOMER, if the fiber optic network used to provide the Services covered by that Service Order is no longer in a commercially usable condition. However, this paragraph shall not excuse CCC from its obligation to use commercially reasonable efforts to maintain the fiber optic network in usable condition.

4.C.iii. A Service Order may be terminated by CCC immediately, on notice to CUSTOMER, if an applicable legislature, court of competent jurisdiction, administrative agency or other governmental entity causes substantial additional costs to accrue to CCC in connection with that Service Order or otherwise makes future performance of that Service Order impossible or commercially unreasonable (including, without limitation, a requirement that the fiber optic network used to provide the Services covered by that Service Order must be relocated or replaced, in whole or in part).

4.C.iv. A Service Order may be terminated by CCC if CUSTOMER fails to pay any sum due hereunder, whether for that Service Order or otherwise, on or before the date such amount becomes due or admits its inability to pay its debts as such debts become due.

Upon the termination of a Service Order, all rights of CUSTOMER related to that Service Order shall immediately cease and terminate.

#### 4.D. Termination Liability.

4.D.i. If CUSTOMER terminates a Service Order for any reason not stated in Section 4.C.(i) above or 5.C below, or if CCC terminates a Service Order because of CUSTOMER's nonpayment, then CUSTOMER shall pay to CCC, within thirty (30) days of termination, (i) all amounts under or related to that Service Order owed to CCC that are attributable to the period ending on the applicable termination date plus (ii) the Non-Recurring Lease Fee for that Service Order, if not already paid. Such amounts constitute liquidated damages, not a penalty.

4.D.ii. If either party terminates a Service Order in accordance with Section 4.C.(i) above or 5.C. below, or if CCC terminates a Service Order pursuant to Sections 4.C.(ii) or 4.C.(iii) above,, then CUSTOMER shall pay to CCC, within thirty (30) days of termination, (i) all amounts under or related to that Service Order owed to CCC that are attributable to the period ending on the applicable termination date plus (ii) the Non-Recurring Lease Fee for that Service Order, if not already paid. Such amounts constitute liquidated damages, not a penalty.

### **5. LIMITATION OF LIABILITY, INDEMNIFICATION AND DISCLAIMER**

5.A. Limitation of Liability of CCC. OTHER THAN THE OBLIGATION TO ISSUE INTERRUPTION CREDITS UNDER SECTION 6.C. BELOW, CCC SHALL HAVE NO RESPONSIBILITY, LIABILITY OR OBLIGATION TO CUSTOMER, ITS AGENTS OR CUSTOMERS FOR (1) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS OR LOSS OF USE, REGARDLESS OF WHETHER CCC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS BY REASON OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DEFECT, DELAY IN AVAILABILITY, OR FOR ANY OTHER CAUSE, (2) THE CANCELLATION OF SERVICES HEREUNDER UPON TERMINATION OF THIS AGREEMENT OR (3) THE INACCURACY OF ANY INFORMATION OR THE INADEQUACY OF ANY PROCEDURES OR PERSONNEL.

**5.B. Disclaimer of Warranty.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT CCC DISCLAIMS ANY WARRANTIES OF ANY TYPE OR KIND REGARDING THE SERVICES WHICH ARE THE SUBJECT OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY WARRANTIES CONCERNING THE ACCURACY, ADEQUACY OR TIMELINESS OF ANY INFORMATION PROVIDED HEREUNDER.

**5.C. Force majeure.** If and to the extent that any failures or delay in CCC's performance of one or more of its obligations hereunder is caused by any of the following conditions, then CCC's performance of such obligation or obligations shall be excused for and during the period of any such delay: act of God; fire; flood; fiber cuts due to circumstances outside of CCC's reasonable control; equipment failure due to circumstances outside of CCC's reasonable control; failures, shortages or unavailability or other delay in delivery by a third party supplying services, equipment, fiber or network to CCC; government codes, ordinances, laws, rules, regulations or restrictions; strikes or other labor disputes; or any other cause beyond the reasonable control of CCC. If a force majeure event is not remedied within forty-five (45) days, either party may, without liability, terminate the affected Service Order(s).

## **6. MISCELLANEOUS**

### **6.A. Interconnection/Collocation.**

**6.A.i. Interconnection Generally.** It is the responsibility of the CUSTOMER to obtain interconnection from CCC's equipment at the CUSTOMER Locations, as that term is defined in Section 6.A.ii. below, described in each Service Order. CCC shall not be responsible for delays in the provisioning of this interconnection and shall not postpone billing if this interconnection is not provided by the Service Commencement Date contained in each Service Order. CUSTOMER shall pay all amounts billed by CCC during any such period of delay.

**6.A.ii. Collocation.** CUSTOMER hereby grants to CCC, a license to use however much space, power included, at each CUSTOMER Location listed in a Service Order, that CCC reasonably desires in order to satisfy its obligations under this Agreement (a "CUSTOMER Location"). Such arrangement shall be governed by the Terms of Collocation attached as Exhibit A hereto, as well as the terms of this Agreement

### **6.B. Interruptions.**

**6.B.i. Interruption.** An "Interruption" means any two (2) second interval with a complete interruption of transmission or a bit error rate worse than  $1 \times 10^{-9}$  for a particular communications path within a route between any of CCC's equipment at two (2) CUSTOMER Locations listed on a Service Order (a "Route").

**6.B.ii. Interruption Duration.** In the event of an Interruption in the Service provided under this Agreement, allowance for the period of Interruption with respect to each Route (under one or more Service Orders) affected by such Interruption, if not due to the fault or negligence of the CUSTOMER, shall be as follows: No credit shall be allowed for an interruption of eight (8) hours or less. CUSTOMER shall be credited for an Interruption in excess of eight (8) hours at the rate of 1/1440 of the Monthly Lease Fee applicable to the Service which is subject to the Interruption for each half hour or major fraction thereof that an Interruption continues, such Interruption to be measured from (i) the time of notice by CUSTOMER to CCC that an Interruption has occurred to (ii) the time of restoration.

**6.B.iii. Interruption Access.** An Interruption allowance shall not be applicable (i) for any period during which CUSTOMER fails to afford access to any facilities for the purpose of investigating and clearing troubles, (ii) for planned maintenance outages or (iii) for force majeure events, as described in Section 5.C. above.



6.C. Fiduciary Relationship. CUSTOMER understands and accepts that no fiduciary relationship arises by virtue of this Agreement and that, accordingly, CCC incurs none of the obligations that arise in such relationship as an incident of its fulfilling its obligations under this Agreement. Further, CUSTOMER understands and accepts that CCC is not an insurer of profits for CUSTOMER, nor does CCC guarantee the success of CUSTOMER'S business as a result of CUSTOMER'S receipt of services under this Agreement.

6.D. Relationship. CUSTOMER is not an authorized agent, partner or co-marketer with CCC. CUSTOMER shall not state, either explicitly or implicitly, to any third party that it is affiliated with, authorized, sponsored by, or endorsed by CCC. CUSTOMER shall have no authority to incur any obligation or liability on behalf of CCC.

6.E. Assignment. This Agreement shall be binding on each party and each party's respective successors and assigns. Unless otherwise set forth herein, neither of the parties may assign this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the parties may assign this Agreement without the consent of the other party to any affiliate of such party, to the surviving entity into which such party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets. CCC shall also have the right, without the consent of CUSTOMER, to assign or otherwise transfer this Agreement as collateral to any lender to CCC (or lender to any successor or assign of CCC); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, CUSTOMER agrees to accept performance of this Agreement by the assignee so long as the assignee is subject to the provisions of this Agreement. Any lien rights claimed by CUSTOMER under this Agreement shall be and are hereby specifically subordinated to the security interests of CCC's lender(s).

6.F. Notices. Notices to be given in connection with this Agreement shall be in writing, delivered personally or by facsimile, telegram, professional courier or certified, registered or express mail, postage prepaid to the respective addresses set forth herein (or at such other addresses as shall be given in writing by either party to the other). All notices, requests, demands or communications shall be deemed effective upon the earlier of: (a) the date such notice has been received; or (b) the third calendar day after delivery to a professional courier service; or (c) five (5) calendar days after deposit with the United States Postal Service if sent by certified or registered mail, return receipt requested.

If to CCC:

Cinergy Communications Company  
1419 W. Lloyd Expressway, Suite 100  
Evansville, IN 47710  
ATTN: President  
FACSIMILE NUMBER: (812) 456-4731

With copy to:

Cinergy Communications Company  
8829 Bond Street  
Overland Park, KS 66214  
ATTN: Legal  
FACSIMILE NUMBER: (913) 492-1684

If to CUSTOMER:

Clay Community Schools  
P.O. Box 169

Knightsville, IN 47857  
ATTN: Superintendent  
FACSIMILE NUMBER: (812) 442-0849

CUSTOMER invoices to:

Clay Community Schools  
P.O. Box 169  
Knightsville, IN 47857  
ATTN: Accounts Payable Department

6.G. Headings. The headings of the sections of this Agreement are for convenience only and shall not limit or otherwise affect the meaning hereof.

6.H. Severability. In the event any terms and conditions of this Agreement shall be deemed invalid by any court of competent jurisdiction, such terms shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect.

6.I. No Waiver. No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both parties. The failure of either party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision and all terms shall remain in full force and effect.

6.J. Governing Law & Statutes of Limitation. This Agreement shall be deemed to be a contract under the laws of the State of Indiana and the construction, interpretation and performance of this Agreement and all transactions thereunder shall be governed by the laws of the State of Indiana. Any claims arising out of or related to this Agreement shall be made within one (1) year from the date the claim arises.

6.K. Alternative Dispute Resolution. The parties plan to use due diligence to work together to implement this Agreement. However, the parties understand that issues and conflicts may arise. The parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts.

If a dispute arises between the parties relating to this Agreement, the parties agree to use the following alternative dispute resolution ("ADR") procedure: Any claim or controversy related to or arising out of this Agreement whether in contract or in tort ("Dispute"), will be resolved on a confidential basis according to the following process, which either party may start by delivering to the other party a written notice describing the Dispute and the amount involved ("Demand"). After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after forty-five (45) days after the receipt of the Demand, either party may start binding arbitration in Evansville, Indiana. The arbitration will be before a three-arbitrator panel. Each party will select one arbitrator to represent its interest, at its sole expense. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, CUSTOMER shall reimburse CCC for all charges, costs, expenses and attorney's fees described in Section 3.A. above. The decision(s) of a majority of the arbitrators shall be final and binding on the parties.

Notwithstanding the foregoing, either party may resort to a court by applying for interim relief if such party reasonably determines that such relief is necessary to prevent irreparable injury to it or to a third party.

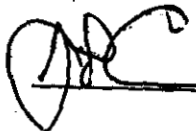
6.L. Entire Agreement. This Agreement, which embodies the entire Agreement between the parties hereto, is subject to final approval by CCC and shall not be binding unless executed by both parties. Once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties. Both parties have had the opportunity for counsel to review this Agreement; thus, neither party shall be considered the drafter of this Agreement in the event of filing a claim or other legal proceeding. The parties agree that in the event of any ambiguity of terms, this Agreement shall not be construed against the drafter.

IN WITNESS WHEREOF, the parties have duly signed this Agreement on the date first written above.

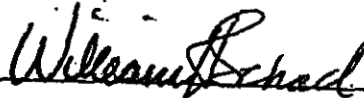
Cinergy Communications Company

Clay Community Schools

By:



By:



Its:

as president

Its:

Superintendent

**EXHIBIT A  
COLLOCATION**

1. **GRANT OF LICENSE ("License"):**

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, CUSTOMER hereby grants to CCC, an irrevocable and indefeasible right to occupy, use and maintain however much space and power at each CUSTOMER Location as CCC reasonably desires in order to satisfy its obligations under this Agreement (the "Licensed Space"), for the term of this Agreement or any then-existing Service Order as long as such Service Order is in effect. From and after the date efforts to ready the Licensed Space for CCC's occupancy are commenced, CUSTOMER may not relocate, or cause CCC to relocate, any of CCC's equipment or facilities from any CUSTOMER Location during the term, unless the CUSTOMER Location is relocated. CCC and its affiliates shall have 24 hour / 7 day per week unescorted access to such space and shall have an easement of ingress and egress for its personnel and its facilities to access such space. No fees or charges shall be imposed on CCC in connection with, or related to, the License.

2. **TITLE TO EQUIPMENT:**

Title to CCC's equipment and other facilities located in or at each CUSTOMER shall remain with CCC and its subtenants, sublicensees, successors and assigns, as applicable. From time to time throughout the term, CCC may remove, or cause to be removed, from any CUSTOMER Location, any or all of CCC's equipment or other facilities. Upon expiration or termination of the License, CCC shall remove, or cause to be removed, from each CUSTOMER Location, any and all of CCC's equipment and other facilities. CUSTOMER hereby acknowledges and agrees that only CCC authorized personnel shall be allowed to access the CCC equipment and other facilities.

# CINERGY. COMMUNICATIONS

## SERVICE ORDER #1

Date: January 21, 2004

Acct Exec Initials: SSB

Pursuant to all the terms and conditions of the Master Service Agreement between Cinergy Communications Company ("CCC") and Clay Community Schools ("Customer"), dated January 21, 2004. Customer hereby orders the following Service(s):

### CUSTOMER INFORMATION

Customer Name: Clay Community Schools	Customer #: New	Abbr.:
Originator Contact: Randall A. Burns	Phone: 812-443-4461, ext. 117	Fax: 812-442-0849
Technical Contact: William J. Milner II	Phone: 812-448-1530, ext. 1101	Fax: 812-442-0608
Customer Circuit #:	Customer PON:	
Requested Service Date: July 1, 2004	CCC Circuit ID#:	Initial Term: 10 YEARS <sup>1</sup>

1. THE INITIAL TERM SHALL BEGIN ON THE SERVICE COMMENCEMENT DATE WHICH SHALL NOT BE BEFORE JULY 1, 2004. AFTER THE EXPIRATION OF THE INITIAL TERM, THIS SERVICE ORDER SHALL AUTOMATICALLY RENEW FROM YEAR TO YEAR UNDER THE SAME TERMS AND CONDITIONS AS STATED HEREIN, UNLESS TERMINATED AT THE END OF THE INITIAL TERM OR THE THEN CURRENT RENEWAL TERM, AS APPLICABLE, WHICH EITHER PARTY MAY DO BY PROVIDING WRITTEN NOTICE OF TERMINATION TO THE OTHER PARTY NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN CURRENT TERM.

### SERVICE STATUS

- ☒ New Service  
☐ Change Service  
☐ Disconnect  
☐ Cancel  
☐ Sup  
☐ Other:  
☐ Expedite

### SERVICE(S)

CCC will provide one (1) Gig E connection between each of the following locations:

- Between Location B and Location A
- Between Location B and Location C
- Between Location B and Location D
- Between Location B and Location E
- Between Location B and Location F
- Between Location B and Location G
- Between Location B and Location H
- Between Location B and Location I

### CUSTOMER LOCATION

<b>LOCATION A</b> Staunton Elementary 6990 North County Rd 425 West Brazil, IN 47834	<b>LOCATION B</b> North Clay Middle 3 West Knight Drive Brazil, IN 47834	<b>LOCATION C</b> Transportation 212 North Colfax Brazil, IN 47834
<b>LOCATION D</b> Meridian Elementary 410 North Meridian Street Brazil, IN 47834	<b>LOCATION E</b> Prevention Center 501 East Jackson Street Brazil, IN 47834	<b>LOCATION F</b> Van Buren Elementary 2075 East County Road 1200 North Brazil, IN 47834
<b>LOCATION G</b> Forest Park Elementary 800 South Alabama Street Brazil, IN 47834	<b>LOCATION H</b> East Side Elementary 936 East National Ave Brazil, IN 47834	<b>LOCATION I</b> Central Administration Building 9750 North Crawford Street Knightsville, IN 47857

**Monthly Lease Fee**

\$845.00/month

**Non-Recurring Lease Fee**


\$436,479.00 shall be due and payable within 60 days of the Service Commencement Date.

Customer, at its cost, shall provide collocation space and power in Locations A, B, C, D, E, F, G, H and I and access to such space, including any necessary building entrance rights in accordance with the terms of Exhibit A to the Master Service Agreement.

Please call (812) 456-4785 for information and assistance.  
This Service Order is hereby incorporated in its entirety into the Master Service Agreement and is hereby executed by the respective parties hereto

**CINERGY COMMUNICATIONS COMPANY**

By:

 as president  
(authorized signature)

Name: JOHN P. CINELLI

Title: (print)  
PRESIDENT

Date: 1-25-2004

**CLAY COMMUNITY SCHOOLS**

By:

  
(authorized signature)

Name: WILLIAM H. SCHAD

Title: (print)  
SUPERINTENDENT

Date: January 21, 2004

4

**Clay Community Schools  
Cost Breakdown for SLD**

**Estimate based on 15 ½ miles and 9 facilities:**

Cisco Equipment	\$ 50,579.00
Installation of Equipment	\$ 9,000.00
Engineering Cost of Outside Plant	\$ 40,920.00
Right-of-Way Cost	\$ 24,000.00
Make Ready Cost	\$ 81,840.00
Cable Cost	\$ 81,840.00
Cable Hardware Cost	\$ 40,920.00
Cable Installation Cost	<u>\$167,760.00</u>
Total Estimate	\$496,859.00

NRC for Clay Community School Project: \$436,479.00

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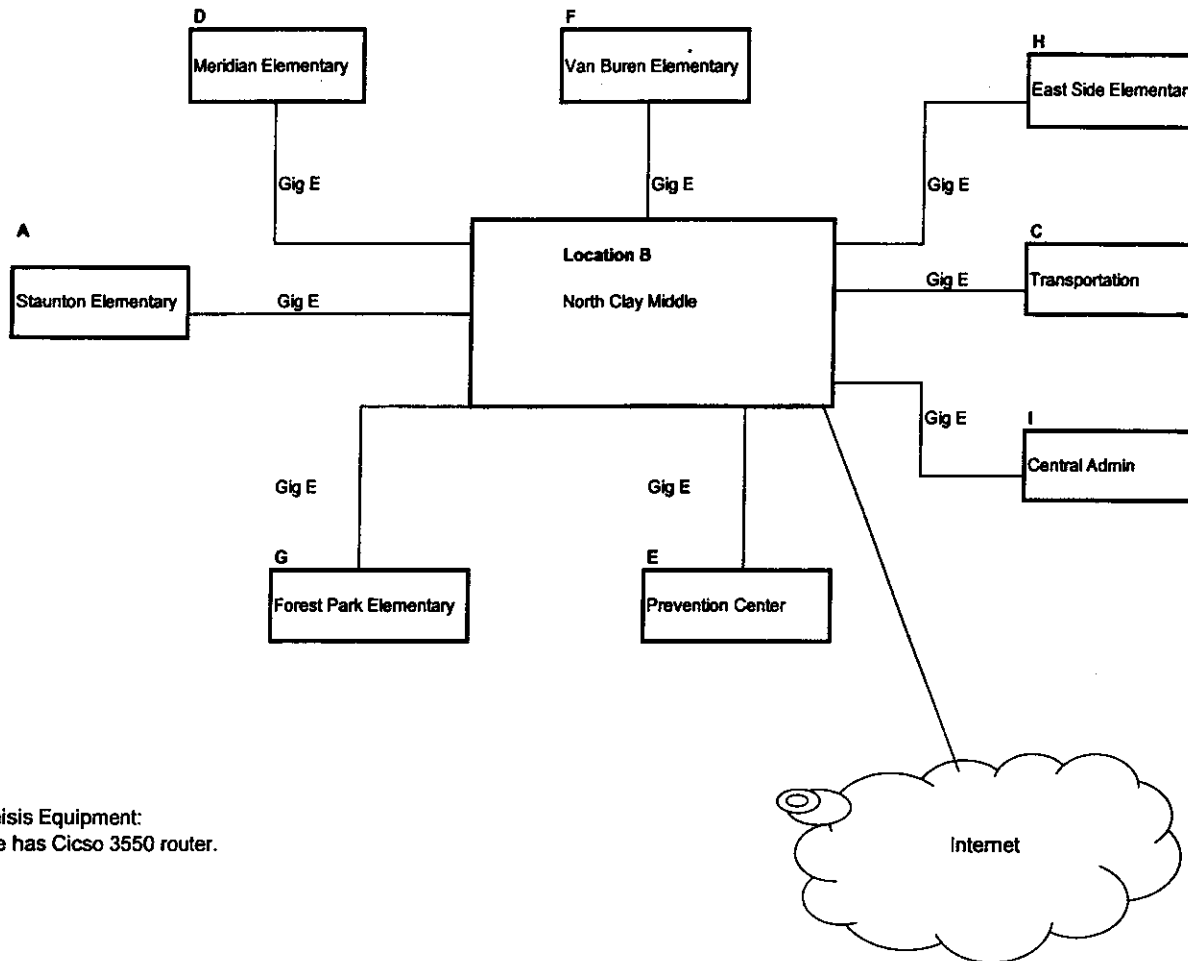
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Clay Community Schools  
Block Diagram of  
Proposed Gigabit Ethernet Services  
Revised 01/21/04



Circuits

B - A  
B - D  
B - F  
B - H  
B - C  
B - I  
B - E  
B - G

On premisis Equipment:  
Each site has Cisco 3550 router.

W

The first part of the report deals with the general situation of the country. It is a very interesting and informative study of the country's development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's development. It is a must-read for anyone interested in the country's development.

The second part of the report deals with the country's economic development. It is a very interesting and informative study of the country's economic development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's economic development. It is a must-read for anyone interested in the country's economic development.

The third part of the report deals with the country's social development. It is a very interesting and informative study of the country's social development. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country's social development. It is a must-read for anyone interested in the country's social development.



6.L. Entire Agreement. This Agreement, which embodies the entire Agreement between the parties hereto, is subject to final approval by CCC and shall not be binding unless executed by both parties. Once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties. Both parties have had the opportunity for counsel to review this Agreement; thus, neither party shall be considered the drafter of this Agreement in the event of filing a claim or other legal proceeding. The parties agree that in the event of any ambiguity of terms, this Agreement shall not be construed against the drafter.

IN WITNESS WHEREOF, the parties have duly signed this Agreement on the date first written above.

Cinergy Communications Company

Clay Community Schools

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Its: as president

Its: Superintendent

**Monthly Lease Fee**

\$845.00/month

**Non-Recurring Lease Fee**

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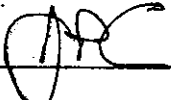
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**CINERGY COMMUNICATIONS COMPANY**

By:

 as president  
(authorized signature)

Name: JOHN P. CINELLI

(print)

Title: PRESIDENT

Date: 1-25-2005

**CLAY COMMUNITY SCHOOLS**

By:

  
(authorized signature)

Name: WILLIAM H. SCHAD

(print)

Title: SUPERINTENDENT

Date: January 21, 2004

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